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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/810,891	03/16/2001	Louis H. Borders	WVANP011	6686
34071	7590	03/22/2005	EXAMINER	
IPVENTURE, INC. 5150 EL CAMINO REAL SUITE A-22 LOS ALTOS, CA 94022			BOYCE, ANDRE D	
			ART UNIT	PAPER NUMBER
			3623	

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

**Application No.**

09/810,891

**Applicant(s)**

BORDERS ET AL.

**Examiner**

Andre Boyce

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 March 2001.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) 13-20 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-12 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 18 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-12, drawn to a method for allocating system capacity among a plurality of customers in a system, including associating a customer point value with each customer and dividing the customers into groups according to the point values, thereby determining an allocation distribution, classified in class 705, subclass 8.
  - II. Claims 13-20, drawn to a method for generating a delivery interface, by determining which of a plurality of delivery windows are available for delivery of an order based upon available resources and customer profile, classified in class 705, subclass 8.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as dividing a plurality of customers into a plurality of customer groups, based upon customer point values and determining an actual capacity allocation distribution among the customer groups with reference to customer order data. Invention II has separate utility such as determining which of a plurality of delivery

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windows are available for delivery of an order based upon available resources and customer profile, generating a delivery interface, and transmitting the delivery interface to a remote platform via a network. See MPEP § 806.05(d).

3. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Peter Tong on March 10, 2005 a provisional election was made with traverse to prosecute the invention of I, claims 1-12. Affirmation of this election must be made by applicant in replying to this Office action. Claims 13-20 are withdrawn from further consideration by the Examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.
5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

6. Claims 1-12 have been examined. Claims 13-20 have been withdrawn from consideration. Claims 1-20 are pending.

***Claim Rejections - 35 USC § 101***

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 1-9, 11 and 12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter.

For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts. In the present case the independent claim 1 only recites an abstract idea. The recited steps of associating a customer point value with each customer, dividing the plurality of customers into customer groups, determining an actual capacity allocation distribution, etc. does not involve,

use, or advance the technological arts (i.e., computer, processor, electronically, etc.), since the steps could be performed using pencil and paper.

Additionally, for a claimed invention to be statutory, the claimed invention must produce a useful, concrete, and tangible result. In the present case the claimed invention determines an actual capacity allocation, thereby producing a useful, concrete, and tangible result, but not within the technological arts as explained above.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al (USPN 6,741,995), in view of Dietrich et al (USPN 6,526,392).

As per claim 1, Chen et al disclose a method for allocating system capacity among a plurality of customers in a system (i.e., method for creating an using dynamic profiles of consumer behavior in order to model enterprise data, column 1, lines 60-63), comprising: associating a customer point value with each customer according to a customer point system (i.e., segmentation of the customers based upon certain attributes, including customers by percentile to a particular segment code, column 3, lines 53-58 and table 2), the customer point values being

determined with reference to customer order data (i.e., retailing and electronic commerce, column 3, lines 45-46); and dividing and assigning the plurality of customers into a plurality of customer groups, each customer group corresponding to a range of customer point values (i.e., segmentation of customers in to a plurality of groups based upon certain attributes, column 3, lines 53-58). Chen et al does not disclose determining an actual capacity allocation distribution among the plurality of customer groups with reference to the customer order data; and adjusting the range of customer point values associated with selected customer groups to cause the actual capacity allocation distribution to converge to a target capacity allocation distribution. Dietrich et al disclose the use of customer and baseline profiles with a service network model (column 2, lines 42-44), including shipment of goods to a customer (column 3, lines 32-35), wherein the data is analyzed to create customer profiles describing customer service activity and evaluate the incremental cost and resource allocation (i.e., range) of adding new customer to the service network (column 3, lines 57-67), in order to determine the correct price range (i.e., target allocation, column 4, lines 1-3). Both Chen et al and Dietrich et al are concerned with effective consumer profiling in order to understand the fit of the customer in relation to other customers. Further, Chen et al disclose including a plurality of expressions for segmenting customers (column 4, lines 37-41), therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include adjusting the range of customer point values associated with selected customer groups and adjusting the range of customer point values

associated with selected customer groups in Chen et al, as seen in Dietrich et al, thus allowing for consideration of the fit of new customers with other related service activity that may be using the same resources, making Chen et al more robust.

As per claim 2, Chen et al disclose a new customer group corresponding to those of the plurality of customers associated with the system less than a predetermined period of time (i.e., segmentation based upon the recency (R) of the customer profile, wherein a new customer would have low R value based upon a particular time, column 5, lines 30-32).

As per claim 3, Chen et al disclose the new customer group is determined without reference to the customer point system (i.e., customer group can be based upon segmentation codes, table 4).

As per claims 4 and 5, Chen et al does not disclose allocating system capacity among the plurality of customers according to the customer groups, wherein the system capacity comprises delivery resources capacity. Dietrich et al disclose the shipment of goods to a customer (column 3, lines 32-35), as the allocation of resources. Further, Dietrich et al disclose associating customers in a plurality of groups (i.e., baseline profile, including summarized information about existing customers, column 6, lines 29-31). Further, Dietrich et al disclose determining which customers to offer a particular service, based upon profile (i.e., customer groups, column 5, lines 33-36). Both Chen et al and Dietrich et al are concerned with effective consumer profiling in order to understand the fit of the customer in relation to other customers. Further, Chen et al disclose including a plurality of expressions



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for segmenting customers (column 4, lines 37-41), therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include allocating capacity of delivery resources in Chen et al, as seen in Dietrich et al, thus allowing for consideration of the fit of new customers with other related service activity that may be using the same resources, making Chen et al more robust.

As per claim 6, Chen et al does not disclose generating a delivery window grid for presentation to a specific customer, the availability of specific windows in the delivery window grid being determined with reference to the customer group to which the specific customer is assigned. Dietrich et al disclose a suitable shipping profile presented to the customer, based upon customer data (column 7, lines 7-24). Both Chen et al and Dietrich et al are concerned with effective consumer profiling in order to understand the fit of the customer in relation to other customers. Further, Chen et al disclose including a plurality of expressions for segmenting customers (column 4, lines 37-41), therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include generating a delivery window in Chen et al, as seen in Dietrich et al, thus allowing for consideration of the fit of new customers with other related service activity that may be using the same resources, making Chen et al more robust.

As per claim 7, Chen et al disclose associating customer group overrides with selected ones of the plurality of customers (i.e., specifying a customer group as an

expression, wherein the expressions are used to evaluate the group, regardless of numeric value, thus allowing the user to override the values, column 8, lines 51-56).

As per claim 8, Chen et al disclose the customer order data for each customer comprise at least one of customer order size and customer order frequency (i.e., frequency F and monetary M of customer profile in the retailing and electronic commerce environment, column 5, lines 30-33).

As per claim 9, Chen et al disclose iterating division of the plurality of customers into the customer groups (i.e., profile composition, including combining one or more groups or segments, provided by segmentation assignment, column 3, lines 56-58). Chen et al does not disclose determination of an actual capacity allocation distribution, and adjustment of the customer point value ranges to effect convergence of the actual capacity allocation distribution to the target capacity allocation distribution. Dietrich et al disclose the use of customer and baseline profiles with a service network model (column 2, lines 42-44), including shipment of goods to a customer (column 3, lines 32-35), wherein the data is analyzed to create customer profiles describing customer service activity and evaluate the incremental cost and resource allocation (i.e., range) of adding new customer to the service network (column 3, lines 57-67), in order to determine the correct price range (i.e., target allocation, column 4, lines 1-3). Both Chen et al and Dietrich et al are concerned with effective consumer profiling in order to understand the fit of the customer in relation to other customers. Further, Chen et al disclose including a plurality of expressions for segmenting customers (column 4, lines 37-41), therefore

it would have been obvious to one having ordinary skill in the art at the time the invention was made to include adjusting the range of customer point values associated with selected customer groups and adjusting the range of customer point values associated with selected customer groups in Chen et al, as seen in Dietrich et al, thus allowing for consideration of the fit of new customers with other related service activity that may be using the same resources, making Chen et al more robust.

As per claim 10, Chen et al disclose the method is entirely automated (computer system 113, figure 1).

As per claims 11 and 12, Chen et al disclose at least a portion of the method is performed manually, including adjusting the customer point value ranges (i.e., screen for creating segmentation codes, including buttons for selecting segment numerically 522, which can be performed by range using button 524, column 9, lines 19-25).

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

-Honarvar et al (USPN 6405173) disclose a decision management system which provides qualitative client assessment.

-Bibelnieks et al (USPN 6567786) disclose increasing the efficiency of customer contact strategies.

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- Guidice et al (USPN 6463420) disclose tracking orders placed with a supplier.
- de Sylva (USPN 6862572) discloses facilitating product delivery interactions.
- Krichilsky et al (USPN 6530518) disclose providing information on product delivery.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre Boyce whose telephone number is (703) 305-1867. The examiner can normally be reached on 9:30-6pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

adb

March 11, 2005

  
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